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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,310	08/28/2003	Michael Robert Rice	6900/SYNX/JB	6977
41161	7590	09/14/2005		EXAMINER
DUGAN & DUGAN, PC			RIDLEY, RICHARD	
55 SOUTH BROADWAY				ART UNIT
TARRYTOWN, NY 10591				PAPER NUMBER
			3651	

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/650,310	RICE ET AL.
	Examiner Richard Ridley	Art Unit 3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 July 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.  
 4a) Of the above claim(s) 7-9, 20-25 and 33 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-6, 10-19, 26-32, 34 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-6, 10-19, 26-32 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Bishop, Tonelli, Harper et al or Marchetti.

In Bishop, unload mechanism 22 unloads carrier 15 from conveyor 1. In Tonelli, unload mechanism 28 unloads carrier 88 from conveyor 6. In Harper et al, unload mechanism 38 unloads carrier 28 from conveyor 27. In Marchetti, unload mechanism 2,3 unloads carrier 1 from conveyor a.

With regard to claim 2, note controller 26 of Bishop, note controller 50 of Tonelli, note controller 58, 63 of Harper et al and note controller 4,5 in figure 1 of Marchetti.

With regard to claims 3, 6 and 15, all but Marchetti apply.

With regard to claims 11, 16-19 and 26-29, note column 5 lines 44-73 of Harper et al for load and unload by mechanism 38, 38a. With regard to claim 12, only Marchetti applies.

With regard to claim 31, rail 69, 77 or 80 of Harper et al is a shelf.

With regard to claim 32, note end effector 23 and linear (curvilinear) guide 26 of Bishop, end effector 38 and linear (curvilinear) guide 50 of Tonelli, end effector 38, 38a and linear (curvilinear) guide 58 of Harper et al and end effector 2 and linear (curvilinear) guide 4 or 5 of Marchetti.

3. Claim 3 is rejected under 35 U.S.C. 112 for the following reason.

The claim is rejected under the second paragraph of 112 for being unclear. If claim 2 (from which claim 3 depends) requires the controller to raise the unload mechanism (which requires a velocity in the vertical direction), how can the unload mechanism have zero velocity or a negative or downward velocity as required by claim 3?

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4. Webb, Wunderlich, Jonsson, Bornstein et al, Bornfleth, Kawamura et al and Waineo are pertinent.

### *Response to Arguments*

1. Applicant's arguments filed have been fully considered but they are not persuasive.

The applicant argues that the claimed conveyor is adapted to transport a ' substrate carrier (or the like) and that this feature is not addressed at all by the Examiner, and that the applicants cannot find, and the Examiner has not identified anywhere within any of the four relied upon references where there is any mention of a substrate carrier at all, much less a "conveyor adapted to transport a substrate carrier.

In response the examiner notes that

#### MATERIAL OR ARTICLE WORKED UPON DOES NOT LIMIT APPARATUS CLAIMS

"Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." In re Young, 75 F.2d \*>996<, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)).

further the examiner notes that the

#### APPARATUS CLAIMS MUST BE STRUCTU-RALLY DISTINGUISHABLE

FROM THE PRIOR ART

>While features of an apparatus may be recited either structurally or functionally, claims< directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

See MPEP 2114 & 2115.

2. Regarding claim 3, the applicant has attempted to explain the language "...zero velocity or less..." by citing language from the specification. As written the claim is unclear in that where there is movement there is velocity. Additionally, the language "less than zero velocity" is unclear and apparently incorrect.

*Conclusion*

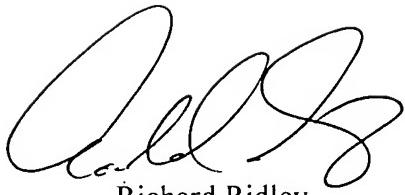
3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Ridley whose telephone number is (571) 272-6917. The examiner can normally be reached on Mon-Fri 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard Ridley  
8 Sept 2005

Richard Ridley  
Primary Examiner  
Art Unit 3651